

② 97CV 5127

February 13, 2008

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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 07-CV-6011

In Regard to the Matter of:

JOSE ORTIZ.

- 18 -

WILLIAM H. FAUVER, et al.

Defendants.

WEDNESDAY, FEBRUARY 13, 2008

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

MASTROIANNI & FORMAROLI, INC.

Certified Court Reporting & Videoconferencing
251 South White Horse Pike
Audubon, New Jersey 08106
856-546-1100

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1 JUDGE BISSELL: All right. We will reopen
2 the record for the purpose of a decision from the
3 special master consistent with the provisions of the
4 Order of Reference to Special Master and the Special
5 Master Agreement incorporated therein.

6 Opening in the matter of Jose Ortiz,
7 newly assigned docket number 07-6011, a separate
8 transcript in that matter should be generated for the
9 purpose of reflecting this opinion.

10 Pursuant to discussions with counsel
11 today and discussions by the Special Master with
12 Judges Kugler and Schneider, this decision, as in
13 every case submitted to me for plenary decision, will
14 be rendered pursuant to Local Civil Rule 52.1 which
15 reads in its entirety, and its mercifully brief, and
16 I quote: "When an oral opinion is given in lieu of a
17 written opinion and is transcribed, the reporter
18 shall submit it to the judge for revision before it
19 is filed," close quote.

20 So I will follow that format and
21 request our reporter under the usual timetable to
22 provide to me a transcript of this opinion as
23 rendered for the purpose of its revision to the
24 extent that I deem it necessary.

25 This is not to be construed as an

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1 invitation in itself for revision and/or applications
2 for reconsideration and the like by counsel. In
3 other words, that revision is mine. As finalized and
4 filed after such revisions, this transcript will
5 constitute the "written report" required under
6 paragraph 7 of the Order of Reference to a Special
7 Master.

8 Whether there are going to be
9 motions for reconsideration presented before me or
10 through whatever other review one might choose to
11 take from this opinion, of course, is going to have
12 to abide the decision of the respective counsel and
13 the governing rules of court.

14 There are certain provisions in the
15 agreements that guide the Master in the presentation
16 of this decision. I'm to be guided by the prior
17 rulings of this court on evidentiary and legal
18 issues. I'm directed to recommend to the district
19 court an award of nominal, compensatory and/or
20 punitive damages as provided by law and as if
21 rendered in a jury trial. And I'm directed to
22 determine the award of any attorneys fees upon
23 application of the prevailing party.

24 I'd rather have a discussion at some
25 point further down the line with regard to attorney's

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1 fee applications if, as and when there are cases on
2 which a plaintiff or more than one plaintiff
3 prevails, rather than deal with that today; although
4 we do have some extra time today, and if we want to
5 address that in a somewhat academic fashion, I
6 suppose we could.

7 As the first item of business in the
8 opinion itself I incorporate by reference the jury
9 instructions as set forth in the Walker and Mejias
10 charges and to the extent applicable to the case at
11 hand.

12 I'm now prepared to deal with the
13 specifics of the Ortiz case.

14 He describes the alleged incident at
15 the farm, the full minimum facility at cottage six on
16 October 13, 1997.

17 He alleges a beating as described at
18 the transcript for January 28th, 2008 at pages 107
19 through 111.

20 I find, however, that his testimony is
21 not sufficiently credible to sustain his burden of
22 proof that this beating took place. I find that the
23 photograph taken with regard to the supposed injury
24 to his scalp is, in fact, demonstrative of a minor
25 scrape, nothing that would result in permanency.

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1 Secondly, when sitting here on the
2 witness stand and asked to point to the apparent
3 residual marks on his head he pointed to a different
4 point on his head, the location as best I can recall
5 of approximately three welts on his forehead that
6 bore no resemblance to the contemporaneous photograph
7 and, frankly, did not in any way appear to be the
8 product of an incident some ten-and-a-half years ago.

9 I note also the discrepancy between the
10 location of his other injury as to whether it was on
11 his back or on his right side. Apparently reported
12 as a right side injury initially, hence the
13 photograph of that area, and now more and more as he
14 testified at trial in the small of his back.

15 From the events as he described it, he
16 claims that he still has pains in his back and head
17 after ten-and-a-half years from the injuries he
18 describes. Frankly, that is not credible and impacts
19 upon his credibility regarding a description of the
20 incident itself.

21 He made an effort to embellish before
22 the Master the extent of his back injury when in the
23 same transcript at page 112, line 18 he said: "I had
24 a tumor come out of it." Not an awful lot was made
25 of this, but it certainly is completely unsupported

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1 and, as I said, smacked to me of an effort to
2 embellish injuries beyond the truth.

3 P-10, the Crotty report, was introduced
4 into evidence. I considered that also. The reports
5 of inmates Anderson and Gonzalez do not corroborate
6 the type of beating as described by Mr. Ortiz. At
7 most, they would sustain appropriate inferences that
8 he was pushed on to his bunk to hasten him getting
9 back there because the guards didn't feel he was
10 moving quickly enough and that in doing so his head
11 might have been forced against the wall.

12 At most I would consider that an
13 exercise in disciplinary action to reinforce the
14 command of the officers. And, once again, the scrape
15 on the forehead was minimal and not rising to the
16 level of anything like the injury that he complains
17 of or endeavors to persuade the Master about.

18 Finally, although not every item of
19 evidence has been discussed in this opinion/report,
20 all evidence presented to the Special Master was
21 reviewed and considered.

22 Accordingly, as I said, I find that
23 this plaintiff has not sustained his burden of proof
24 by a preponderance of the credible evidence with
25 regard to an Eighth Amendment violation. Indeed,

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1 the conclusion of Mr. Crotty, in his report P-10,
2 that this event was, indeed, unsubstantiated is the
3 same conclusion reached by myself. I recommend in
4 this report that the District Court enter a verdict
5 of no cause for action.

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1 C E R T I F I C A T E

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3 I, Theresa O. Mastroianni, a Notary Public and
4 Certified Shorthand Reporter of the State of New
5 Jersey, do hereby certify that the foregoing is a
6 true and accurate transcript of the testimony as
7 taken stenographically by and before me at the time,
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a
10 relative nor employee nor attorney nor counsel of any
11 of the parties to this action, and that I am neither
12 a relative nor employee of such attorney or counsel,
13 and that I am not financially interested in the
14 action.

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Theresa O. Mastroianni

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Theresa O. Mastroianni, C.S.R.

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Notary Public, State of New Jersey

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My Commission Expires May 5, 2010

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Certificate No. XI0857

24

Date: February 19, 2008

25

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